IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09-03-2007

CORAM

THE HONOURABLE MR.JUSTICE K. VENKATARAMAN

C.M.A.No.1074 of 2001

T.V.Kunjali .. Appellant/Applicant

vs.

Union of India,
Owning Southern Railway
rep. by General Manger .. Respondent/Respondent

Civil Miscellaneous Appeal filed against the award and decree dated 21.06.2001 made in O.A.No.20 of 2000 on the file of the Railway Claims Tribunal, Chennai Bench.

For Appellant : Mr.T.Raja Mohan

For Respondent : Mr.V.G.Sureshkumar

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JUDGMENT

The claimant before the Railway Claims Tribunal, Chennai Branch is the appellant before this Court. The appellant has filed the said Claim Application wherein he has stated that he has boarded West Coast Express Train No.6627 at Chennai on 4.2.2000 in order to proceed to Badagara (Kerala). When the train reached the Salem Junction at about 6.10 p.m., the petitioner with a view to purchase refreshment from the mobile vendors, he was standing near the entrance of the compartment. At that time due to sudden start of the train with jerk and pushing of passengers, he lost control of the hold and accidentally slipped and fell between the platform and the train. Due to the said impact, his left hand was crushed and was amputated below elbow and he has also suffered grievous injuries abrasion and lacerated wound over the right thigh and right of fore head. He was sent to Government Medical College Hospital, Salem. He got discharged since the treatment was not satisfactory and was admitted at United Hospital, Coimbatore. He was inpatient from 5.2.2000 to 1.3.2000. Claiming that his case has to be considered as accidental

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fall within the meaning of "untoward incident", the said Claim application has been filed.

2. Reply statement has been filed on behalf of the respondent wherein it has been stated that the appellant attempted to board the running train and fell down in between the platform and the train and sustained injuries. Since, the appellant attempted to board the running train, fell down and sustained injuries due to his own negligence, the respondent is not liable to pay any compensation. Thus, the sum and substance of the reply statement on behalf of the respondent was that the accident has happened as a result of the rash and negligent act of the appellant for which the liability cannot be fastened on the railways. The Railway Claims Tribunal, Chennai Branch after considering the rival claims dismissed the Claim Application preferred by the appellant on the ground that due to the appellant's rash and negligent act, he has sustained injuries, as such, the respondent is not liable to pay any compensation for the injuries suffered by him. Challenging the said Order, the claimant has preferred the present appeal.

3. Mr.T.Raja Mohan, learned counsel appearing for the appellant contended that the accident happened as narrated by the appellant, who has been examined as A.W.1. To disprove the same, there is no contra evidence on the side of the respondent. The learned counsel further argued even assuming that the appellant sustained injuries while attempting to board the running train, even then, the appellant will be entitled to compensation. He has drawn my attention to Section 123 © (2) of the Railways Act. Section 123 © (2) of the Railways Act (hereinafter called the said Act) reads as follows :

> "(a) "accident" means an accident of the nature described in Section 124;
> © "untoward incident" means -
> (2)the accidental falling of any passenger from a train carrying passengers."

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According to the learned counsel appearing for the appellant, the said provison clearly says that "untoward incident" means a passenger accidentally falling from a train carrying passengers.

4. Further, the learned counsel appearing for the appellant has drawn my attention to Section 124-A of the said Act. Section 124-A proviso reads as follows :

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"Provided that no compensation shall be payable under this section by the railway administration if the passenger dies or suffers injury due to -
(a) suicide or attempted suicide by him;
(b) self-inflicted injury;
© his own criminal act'
(d) any act committed by him in a state of intoxication or insanity;
(e) any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident."

By pointing out the said provisio, the learned counsel appearing for the appellant contended that only in cases of suicide or attempted to suicide by him etc., as put forth in the proviso to Section 124-A, the respondent is not bound to pay any compensation. But, in the case on hand, the appellant even assuming that he has tried to board the running train is entitled to compensation from the respondent.

5. Per contra, the learned counsel appearing for the respondent contended that in the Claim Application, the appellant has stated that he was standing near the entrance of the compartment and due to the sudden start of the train with jerk and pushing of the passengers, he has lost his control and suddenly slipped and fell down between the platform and the train and suffered injuries. But, in Ex.A-1 (a) and Ex.A-1 (b) dated 4.2.2000, it is specifically mentioned that the appellant sustained injury due to accidental fall into the railway track, while boarding a running train. Thus, according to the learned counsel appearing for the respondent, the appellant has not approached the Tribunal with clean hands. Further, according to the learned counsel appearing for the respondent that since the appellant sustained injury, when he was trying to board the running train, he is not entitled to any compensation. According to the learned counsel appearing for the respondent, since the injuries have been caused due to his own fault, the appellant is not entitled for any compensation.

6. I have heard Mr.T.Raja Mohan, learned counsel appearing for the appellant as well as Mr.V.G.Suresh Kumar, learned counsel appearing for the respondent.

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7. It is true that in the Claim Application, the appellant has pleaded that he was standing near the entrance of the compartment and due to the sudden start of the train and pushing of the passengers, he lost control of the hold, suddenly slipped and fell down and sustained injuries. But Ex.A-1 (a) and Ex.A-1 (b) shows that the appellant was attempting to board a running train. Then, the question arises whether the appellant is entitled to compensation, if he has sustained injuries at the time when he has tried to board a train as alleged by the respondent. Section 123 of the said Act defines "untoward incident". It says "accidentally falling of any passenger from a train carrying passengers". Proviso 124-A of the said Act states that no compensation shall be payable under this Section by the Railway Administration, if the passenger dies or suffers injury due to-

a. suicide or attempted suicide by him;
b. self-inflicted injury;
c. his own criminal act;
d. any act committed by him in a state of intoxication or insanity;
e. any natural cause or disease or medical or surgical treatment unless such treatment becomes necessary due to injury caused by the said untoward incident."

The said proviso does not cover the case of a person, who sustained injury while attempting to board the train. As rightly pointed out by the learned counsel appearing for the appellant, the case on hand will not cover the categories listed under the proviso to Section 124(a) of the said Act. The said proviso clearly lists certain categories of persons who are not entitled to compensation in the case of injury or death occurred thereon. Admittedly, in the present case, even if the plea of the respondent that the appellant suffered injuries while boarding the train is taken to be true, still the respondent-Railway Administration is liable to pay compensation to the appellant.

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8. In this connection, the learned counsel appearing for the appellant drawn my attention to the judgment reported in 2005 ACJ 286 wherein the High Court of Andhra Pradesh has considered a similar issue. In the said judgment in para 7, it has been held as follows:

> "In the case on hand, the deceased alleged to have boarded the moving train and slipped, which resulted in his death. In the light of the judgment of Full Bench of this High

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> Court, the fall of the deceased while boarding the train can be treated as an untoward incident. Therefore, the Tribunal was right in coming to a conclusion that it amounts to an untoward incident."

The said judgment relied on the Full Bench decision of the Andhra Pradesh High Court reported in 2004 ACJ 529. In the said judgment, ratio relating to untoward incident and burden of proof have been laid down. Clauses 1 and 2 laid down in the said judgment will be useful for the purpose of deciding this case, which is extracted below :

> "1. Where a bona fide passenger dies in an untoward incident or sustains injuries, as the case may be, Railways to pay compensation without dispute, unless the death of the deceased, or the injuries sustained by the injured, would fall within the exceptions (1) to (e) of proviso to section 124-A of the Act;
>
> 2. Accidental falling would include a passenger trying to alight a train, board a train, or any other like action, and hence they would be covered by untoward incident as specified in section 123(c) of the Act."

8. The learned counsel appearing for the appellant further relied on a decision reported in 2005 ACJ 702. In the said judgment, the learned Judge of the Andra Pradesh High Court has relied on a judgment of the Supreme Court reported in 2001 ACJ 721. In para 7, the learned Judge has held as follows:

> "In the judgment of Honourable Supreme Court reported in Rathi Menon v. Union of India, 2001 ACJ 721 (SC), it was held that the provisions of the Railways Act are not intended to give a gain to the railway administration, but they are made to give fair, just and reasonable compensation to the victims in a speedier measure."

9. Above referred judgments clearly shows that the case of the appellant will fall under the category of untoward incident as defined under Section 123 of the said

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Act. Further, since the case on hand does not cover the instances as provided in proviso to Section 124-A of the Act, the appellant even if it is taken that he was trying to board the running train and sustained injuries, he is entitled for compensation.

10. Though Mr.V.G.Suresh Kumar, learned counsel appearing for the respondent tried to distinguish the finding rendered by the Full Bench reported in 2004 ACJ Page 529, by taking me to paragraphs 80 and 81 of the said judgment, he is not able to satisfy me that the appellant herein is not entitled to compensation. Though, there was a difference of opinion expressed by one of the learned Judge in the said judgment reported, as far as the principles enumerated in that judgment namely Principle Nos.1 and 2, seems to be the uniform view of all the Judges. Hence, I am constrained to hold that the appellant is entitled for the compensation from the respondent. The finding arrived at by the Railway Claims Tribunal, Chennai Branch that the appellant is not entitled to any compensation is totally erroneous and hence, it is liable to be set aside.

11. Regarding quantum of compensation, the learned counsel appearing for the appellant has drawn my attention to Schedule appended to the said Act. Para 3 Clause 3 of the Act clearly says that for amputation of 8" from tip of acromion to less than 4 ½ below tip of olecranon, the claimant will be entitled to Rs.2,80,000/-. Admittedly, in the case on hand, the appellant left hand was crushed and amputated below elbow and hence, he is entitled to a sum of Rs.2,80,000/- as prescribed in the Schedule referred to above.

12. In the result, the judgment of the Railway Claims Tribunal, Chennai Branch made in O.A.No.20/2000 dated 21.6.2001 is liable to be set aside and accordingly, the appellant will be entitled to compensation of Rs.2,80,000/- with interest at 7.5% p.a. from the date of this Order. However there will be no order as to costs.

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Asst.Registrar

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Sub Asst.Registrar

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To

1. The Railway Claims Tribunal, Chennai Bench.

2. The Section Officer, V.R. Section, High Court, Madras.

+1cc to Mr.R.Thirugnanam, Advocate Sr 14894

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km/15.4.

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